

**Representative Craig Hall** proposes the following substitute bill:

**REVENGE PORN AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the requirement of actual emotional distress or harm from the offense of distribution of intimate images.

**Highlighted Provisions:**

This bill:

- modifies the requirement of demonstrating actual emotional distress or harm to the subject of the distributed intimate images from the offense of distribution of intimate images; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-5b-203**, as last amended by Laws of Utah 2019, Chapter 378

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*Be it enacted by the Legislature of the state of Utah:*



Section 1. Section **76-5b-203** is amended to read:

**76-5b-203. Distribution of an intimate image -- Penalty.**

(1) As used in this section:

(a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

(b) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(iii) the individual engaged in any sexually explicit conduct.

(c) "Sexually explicit conduct" means actual or simulated:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) masturbation;

(iii) bestiality;

(iv) sadistic or masochistic activities;

(v) exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(vi) visual depiction of nudity or partial nudity;

(vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(viii) explicit representation of the defecation or urination functions.

(d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(2) (a) An actor commits the offense of distribution of an intimate ~~[images]~~ image if:

(i) the actor knowingly or intentionally distributes to ~~[any]~~ a third party ~~[any]~~ an intimate image of an individual who is 18 years ~~[of age]~~ old or older and knows or should

57 know that the distribution would cause a reasonable person to suffer emotional distress or  
58 harm~~[-if-]~~;

59 ~~[(a)]~~ (ii) the actor knows that the ~~[depicted]~~ individual depicted in the image has not  
60 given consent to the actor to distribute the intimate image;

61 ~~[(b)]~~ (iii) the intimate image was created by or provided to the actor under  
62 circumstances in which the individual depicted in the image has a reasonable expectation of  
63 privacy; and

64 ~~[(c)]~~ (iv) except as provided in Subsection (2)(b), actual emotional distress or harm is  
65 caused to the ~~[person]~~ individual depicted in the image as a result of the distribution ~~[under this~~  
66 ~~section]~~.

67 (b) Subsection (2)(a)(iv) is not an element of the offense described in Subsection (2)(a)  
68 if the individual depicted in the intimate image is incapacitated or deceased.

69 (3) This section does not apply to:

70 (a) (i) lawful practices of law enforcement agencies;

71 (ii) prosecutorial agency functions;

72 (iii) the reporting of a criminal offense;

73 (iv) court proceedings or any other judicial proceeding; or

74 (v) lawful and generally accepted medical practices and procedures;

75 (b) an intimate image if the individual portrayed in the image voluntarily allows public  
76 exposure of the image;

77 (c) an intimate image that is portrayed in a lawful commercial setting; or

78 (d) an intimate image that is related to a matter of public concern or interest.

79 (4) (a) This section does not apply to an Internet service provider or interactive  
80 computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic  
81 communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service,  
82 information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a  
83 commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined  
84 in 47 U.S.C. Sec. 522, if:

85 (i) the distribution of an intimate image by the Internet service provider occurs only  
86 incidentally through the provider's function of:

87 (A) transmitting or routing data from one person to another person; or

88 (B) providing a connection between one person and another person;  
89 (ii) the provider does not intentionally aid or abet in the distribution of the intimate  
90 image; and  
91 (iii) the provider does not knowingly receive from or through a person who distributes  
92 the intimate image a fee greater than the fee generally charged by the provider, as a specific  
93 condition for permitting the person to distribute the intimate image.

94 (b) This section does not apply to a hosting company, as defined in Section  
95 76-10-1230, if:

96 (i) the distribution of an intimate image by the hosting company occurs only  
97 incidentally through the hosting company's function of providing data storage space or data  
98 caching to a person;

99 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution  
100 of the intimate image; and

101 (iii) the hosting company does not knowingly receive from or through a person who  
102 distributes the intimate image a fee greater than the fee generally charged by the provider, as a  
103 specific condition for permitting the person to distribute, store, or cache the intimate image.

104 (c) A service provider, as defined in Section 76-10-1230, is not negligent under this  
105 section if it complies with Section 76-10-1231.

106 (5) (a) Distribution of an intimate image is a class A misdemeanor except under  
107 Subsection (5)(b).

108 (b) Distribution of an intimate image is a third degree felony on a second or subsequent  
109 conviction for an offense under this section that arises from a separate criminal episode as  
110 defined in Section 76-1-401.